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[House No. 10.]

HOUSE OF REPRESENTATIVES.—Febuary 9, 1863.—Read first and second times, laid on the table, and ordered to be printed.

[By Mr. Smith, of Alabama.]

MEMORIAL

OF

J. S. HARWELL AND EUGENE M'CAA.

Cumberland Gap, Jan. 27th, 1863,
Camp of 43d Regiment Alabama Volunteers.

To the Congress of the Confederate States of America:

The undersigned, citizens of Alabama, now serving as volunteer soldiers in the army of the Confederate States, would respectfully ask your attention to the following statements:

They are free citizens of an independant and sovereign State; they have voluntarily left their homes and fire sides to join the army, not as hired mercenaries, but as freemen, to battle for the rights and liberties of their native land, and they therefore claim that they are entitled to be treated with that respect and courtesy which is due to gentlemen. They claim, too, that as *white men* they are fighting for the privileges of their race, and do therefore protest against every law and usage which has the tendency to reduce them to the level of the negro.

For the punishment of various offences, the Articles of War provide, that the offender "shall suffer such punishment as shall be inflicted on him by the sentence of a court martial." Assuming that this gives the authority, court martials have sentenced men, in several instances, to the degrading and disgraceful punishment of the *lash*, to be stripped, tied and whipped with a cowhide, until the blood ran from their lacerated backs, and they had to be sent to the hospitals for treatment! This is no overdrawn picture. Such a case has been witnessed by your memorialists, and they think the outrage demands prompt redress by an act of Congress.

In no free State have the citizens ever been liable to be punished by the *lash*, if we except the punishment sometimes inflicted by the common law of England. No Athenian could be beaten with *stripes*, because the high spirited Greek felt that such punishment was only suitable for barbarians and slaves. One of the principal charges against Verres, was that he had caused Roman citizens to be whipped

like *slaves*—and in making this charge against him, the orator proudly boasted of the privileges of a Roman citizen, and denounces the man, who in his capacity of a military officer, had dared to set at defiance one of the most valued rights of citizenship. Never during the Middle Ages were the free feudatories of the king subject to corporeal punishment. He might be executed for crime; might be hung, drawn and quartered for treason, but for no misdemeanor, could the freeman be subjected to the *lash*, without usurpation and abuse of power. It was not until a decay of the feudal system; until the kings ceased to rely on their own retainers, and began to hire mercenaries, and form standing armies, that whipping began to be practised in the armies of Europe. Then they began to inflict punishment by orders from courts martial, and men were *whipped* for military misdemeanors. So jealous, however, were the English of their liberties, that they carefully guarded against the recognition of any court martial, or any power to *punish*, except through the regular courts of common law, that courts martial were unknown to the English law until after the Revolution of 1688. Even then, although the times imperatively demanded a change in the military code, yet it was with great difficulty that the government succeeded in passing the first military bill. Even now this bill has to be passed at each session of Parliament. The Congress of the United States prohibited whipping both in the army and navy. Why then should the infamous practice be perpetuated in the Confederate States! Are we desirous of rivalling the Russians in the use of the *knout*, or the Austrians in the barbarities which they inflicted in Hungary and Italy!

There is one reason, if there were no other, which is sufficient to cause the abolition of this degrading punishment at the South. Here the white man is by nature a superior being; the influence of *caste* has a powerful influence both upon him and over the negro population. He feels his superiority, and feels that in this war he is fighting for the supremacy of his race. In every regiment from the South there are a number of negroes, many of them belong to the privates. No court martial can sentence an officer to be whipped. But any *gentleman*, by some accident, or even by the wilful commission of some trifling offence, whose person does not happen to be protected by a piece of gold lace on the sleeve and collar, may be sentenced to be flogged like a common slave! Now will any negro, who has seen his master *flogged*, have any respect for him again! Will such a negro not be a dangerous man, when he returns home, and tells his fellow-slaves how the white man was stripped, tied and whipped more severely than any negro on the plantation has ever been.

Your memorialists believe that the courts martial have usurped authority, and that there is no act of Congress, no regulation of the army, no power whatever that can subject a volunteer to the disgraceful punishment of the *lash*. Your memorialists, therefore, earnestly beg that the matter may be inquired into, and that a stop may be put to this infamous, cruel and degrading practice.

J. S. HARWELL,
EUGENE M'CAA.

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